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Attorney for Defendant Juan Carlos Ramon

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUAN CARLOS RAMON,

Defendant

No. 3:17-cr-437-JO

MOTION FOR AMENDMENT OR
REVOCATION OF DETENTION ORDER
WITH SUPPORTING MEMO OF POINTS
AND AUTHORITIES
EXPEDITED HEARING REQUESTED

Defendant Juan Carlos Ramon, by and through his attorney, James F. Halley, moves this court for its order amending or revoking the detention order entered by Magistrate Paul Papak on November 21, and releasing the defendant to the community under appropriate restrictions set forth in 18 USC Sec 3142(c). This motion is supported by 18 U.S.C. §3145(b) and the attached memorandum of points and authorities.

Respectfully submitted December 7, 2017.

JAMES F. HALLEY, P.C.

/s James F. Halley

James F. Halley, OSB #91-175

Attorney for Defendant Juan Carlos Ramon

I. REQUEST FOR EXPEDITED HEARING

This is a motion to revoke or amend Magistrate Paul Papak's order of November 21, 2017 detaining defendant Juan Carlos Ramon without bail pending trial. Mr. Ramon was arrested on November 16, 2017 on a warrant and he has been in custody continuously since that date. Defendant respectfully requests that this motion be set for a hearing at the earliest opportunity.

II. FACTS

Charges and Detention Order.

The criminal complaint on file in case number 3:17-mj-188 accuses defendant Ramon of producing child pornography in violation of 18 U.S.C. §2251. Counsel has not yet seen the indictment in the case number captioned above, so is unaware of other charges that may have been brought against Mr. Ramon. At the detention hearing held on November 21, 2017, the prosecution urged the court to find that there were no conditions that would ensure Mr. Ramon's appearance or the safety of the community. Honorable Paul Papak found that there were no conditions that would ensure the safety of the community, so entered a detention order on that basis.

Proposed Release Plan.

The defense proposes that Mr. Ramon be released on active GPS monitoring, that he be required to live with his parents, Cristobal and Berta Ramon, in Pasadena, California.

Cristobal and Berta have lived in the family home for more than 30 years. Cristobal has worked as an engineer with the same company in Pasadena for 20 years. Berta Ramon has her own cleaning business.

Cristobal and Berta agree that they will provide 24 hour supervision, that they will remove the only computer from the home (Cristobal Ramon's work computer, which he will keep at his office). Their phones have been modified to require passcodes, and they will ensure that Ramon does not have access to either the phones or the passcodes. They both are willing to promise the court that they will ensure that Juan

Carlos Ramon has no contact with minors, and that he has no access to electronic devices, or to the internet. One or both parents will accompany Mr. Ramon when he travels to Oregon for court appearances, and both will promise the court that they will report any violation of release conditions to the Pretrial Services Office immediately.

III. ARGUMENT.

A. The Law Favors Release.

A person accused of a crime shall be released pending trial except in exceptional circumstances. Prior to the Bail Reform Act of 1984, 18 U.S.C. §§3141-3156 [hereinafter the Act],

federal law ... unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.... Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

Stack v. Boyle, 342 U.S. 1, 4, 96 L.Ed. 3, 72 S.Ct. 1 (1951) (emphasis in original).

While the Act made statutory changes permitting pretrial preventive detention [see *United States v. Salerno*, 481 U.S. 739, 95 L.Ed.2d 697, 107 S.Ct. 2095 (1987)], and established two rebuttable presumptions of flight and danger [18 U.S.C. §3142(e)], it remains the law that "only in rare circumstances should release be denied ... [and] [d]oubts regarding the propriety of release should be resolved in favor of the defendant." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (citations omitted).

The Act mandates release under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person as required. *Id.* It provides a three tiered process with an emphasis on "shall release". First, the judicial officer "shall order the pretrial release of the person on personal recognizance or an unsecured appearance bond" unless such release will not assure appearance or will endanger another person or the community. 18 U.S.C. §3142(b). Second, if the accused cannot be released on personal recognizance or unsecured bond, the judicial

officer shall order the pretrial release of the person "subject to conditions listed in subparagraph (c) sufficient to assure appearance and safety." *Id.* §3142(c).

Only if the court finds by clear and convincing evidence that no conditions will reasonably assure safety, or by a preponderance of the evidence that no conditions will assure appearance at trial, may the accused be detained pending trial. *Id.* §3142(f). "The wide range of restrictions available ensures, as Congress intended, that very few defendants will be subject to pretrial detention." *United States v. Orta*, 760 F.2d 887, 890-91 (8th Cir. 1985). When considering a motion for detention or release, "[i]t must be remembered that we are dealing with the deprivation of the liberty of a citizen of the United States who is presumed innocent" [*United States v. Fisher*, 618 F.Supp. 536, 537 (D.C. Pa. 1985), *cert. denied* 479 U.S. 868 (1986)] and that the "Fifth and Eighth Amendments' prohibitions of deprivation of liberty without due process and of excessive bail require careful review of detention orders to ensure the statutory mandate has been respected." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985).

B. THE RELEASE PLAN ENSURES APPEARANCE AND SAFETY.

The proposed release plan ensures both Mr. Ramon's appearance and the safety of the community. He will be subject to the supervision of two responsible adults who will ensure that he has no contact with minors and no access to the internet. The court should find that these conditions, and any others the court finds appropriate, are sufficient to ensure the safety of the community and Mr. Ramon's appearance in court as required.

IV. CONCLUSION.

For the foregoing reasons, the court should release defendant Ramon subject to the conditions outlined above, and any others the court finds necessary to his appearance and the safety of the community.

Date: December 7, 2017

JAMES F. HALLEY, P.C.

/s James F. Halley

James F. Halley

Attorney for Defendant Juan Carlos Ramon